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5  
6 Counsel for Defendant APPLE GATE

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) No. CR 06-173 JCS  
11 )  
Plaintiff, ) **MOTION FOR STATUS CONFERENCE**  
12 )  
v. ) Date: February 27, 2007  
13 ) Time: 2:00 p.m.  
APPLE GATE, ) Court: The Honorable Joseph C. Spero  
14 )  
Defendant. )  
15 )

16 The parties hereby stipulate and request as follows;

- 17 1. On January 30, 2007, this Court continued sentencing in the aforementioned  
18 matter;
- 19 2. On or about February 6, 2007, defense counsel communicated with Dr. Rosenthal  
20 and indicated that the Court required a report from the treating doctor by February  
21 27, 2007. Dr. Rosenthal indicated that she needed to consult with her supervisors  
22 and would return the telephone call;
- 23 3. On or about February 9, Dr. Rosenthal called defense counsel and indicated in a  
24 telephone message that she had consulted with her superiors and she needed a  
25 Court order to write and release the report. This was the first time defense  
26 counsel had heard that Dr. Rosenthal needed a Court order to write and release a

report;

4. On February 12, 2007, defense counsel filed a request for a Court Order directing Dr. Rosenthal to write and release the report;

5. On or about February 13, 2007, defense counsel faxed and mailed the Court order to Dr. Rosenthal;

6. On or about February 20, 2007, Dr. Rosenthal called again and indicated that she was finished with the report, but that she needed an address to mail the report. At that time, she also indicated that she needed Mr. Gate to sign off on the report. This was the first time defense counsel had learned of this requirement;

7. On or about February 20, 2007, undersigned counsel left a message for Mr. Gate to call his treating physician, and reminding him of the sentencing on February 27, 2007. Mr. Gate responded the same day, and said it was the first time that he had heard of the sentencing, and that he could not arrange travel to come to San Francisco February 27, 2007;

8. Because defense counsel has been in trial, she cannot remember what day and time she initially called Mr. Gate regarding the new sentencing date. As such, defense counsel assumes responsibility for not letting Mr. Gate know about his new sentencing date three weeks in advance;;

9. USPO Sara Black called Dr. Rosenthal today, February 26, 2007. According to USPO Black, Dr. Rosenthal is faxing the report to San Francisco today;

10. When defense counsel called AUSA Tracie Brown about this stipulation, she learned that Ms. Brown received a call from counsel at the VA Clinic that the report was mailed to a "Ms. Portman" last week to the attention of the Office of the Federal Defender. To date, defense counsel has not received the report;

11. The parties thus stipulate and jointly request that tomorrow's court appearance, February 27, 2007, be treated as a status conference; that the Court waive Mr.

Gate's appearance, and that the parties discuss the report prepared by Ms. Rosenthal and determine whether or not the Rosenthal report provides the Court with adequate information for the Court to meaningfully exercise its sentencing authority prior to Mr. Gate's travel to San Francisco.

Dated: February 26, 2007

/s/  
ELIZABETH M. FALK  
ASSISTANT FEDERAL PUBLIC DEFENDER

Dated: February 26, 2007

/s/  
TRACIE L. BROWN  
ASSISTANT UNITED STATES ATTORNEY

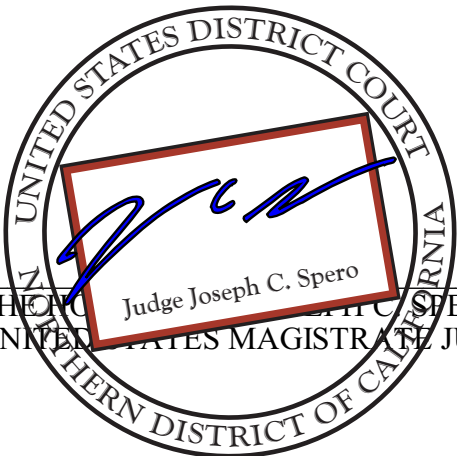
I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/S/) within this e-filed document.

~~[PROPOSED]~~ ORDER

For the reasons stated herein, the parties are hereby ordered to appear for a Status Conference on Tuesday, February 27, 2007 at 2:00 p.m. Mr. Gate's appearance at the status conference is waived.

IT IS SO ORDERED

Dated: February 27, 2007

  
JUDGE JOSEPH C. SPERO  
UNITED STATES MAGISTRATE JUDGE